

**Executive Summary – Enforcement Matter – Case No. 44981**  
**Whitharral Water and Sewer Service Supply Corporation**  
**RN102329695**  
**Docket No. 2012-1869-MWD-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

MWD

**Small Business:**

No

**Location(s) Where Violation(s) Occurred:**

Whitharral Water Sewer Service Supply WWTP, located approximately 2,400 feet east of U.S. Highway 385 and 2,400 feet south of First Street, Whitharral, Hockley County

**Type of Operation:**

Wastewater treatment plant

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** July 4, 2014

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$19,795

**Amount Deferred for Expedited Settlement:** \$0

**Amount Deferred for Financial Inability to Pay:** \$16,195

**Total Paid to General Revenue:** \$100

**Total Due to General Revenue:** \$3,500

Payment Plan: 35 payments of \$100 each

**SEP Conditional Offset:** \$0

Name of SEP: N/A

**Compliance History Classifications:**

Person/CN - Average

Site/RN - Average

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002 and September 2011

***Investigation Information***

**Complaint Date(s):** N/A

**Complaint Information:** N/A

**Date(s) of Investigation:** October 4, 2011 and May 9, 2012

**Date(s) of NOE(s):** May 16, 2012

**Executive Summary – Enforcement Matter – Case No. 44981  
Whitharral Water and Sewer Service Supply Corporation  
RN102329695  
Docket No. 2012-1869-MWD-E**

***Violation Information***

1. Failed to maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures [30 TEX. ADMIN. CODE § 305.125(5) and TCEQ Permit No. WQ0014942001, Operational Requirements No. 4].
2. Failed to provide and maintain an adequate irrigation system which includes adequate equipment to determine the application rate and appropriate cover crops to prevent ponding of effluent or to prevent contamination of ground and surface waters. Specifically, no irrigation system is in place for the Facility and a cover crop has not been planted and maintained [30 TEX. ADMIN. CODE § 305.125(1) and TCEQ Permit No. WQ0014942001, Special Provisions Nos. 6 and 7].
3. Failed to provide certification by a Texas Licensed Professional Engineer that the pond liner meets the appropriate criteria within 45 days of permit issuance. Specifically, the liner certifications for the two existing storage ponds and the facultative lagoon were not submitted to the TCEQ within 45 days of permit issuance [30 TEX. ADMIN. CODE § 305.125(1) and (5) and TCEQ Permit No. WQ0014942001, Special Provisions No. 18].
4. Failed to submit a summary submittal letter within 60 days of the permit issuance. Specifically, TCEQ Permit No. WQ0014942001 was issued on February 2, 2010, and the letter was due by April 3, 2010 [30 TEX. ADMIN. CODE § 305.125(1) and TCEQ Permit No. WQ0014942001, Special Provisions No. 4].
5. Failed to provide an intruder-resistant fence surrounding the wastewater treatment ponds. Specifically, the chain-link fence is not topped with three strands of barbed-wire and does not meet the requirements of an intruder-resistant fence [30 TEX. ADMIN. CODE § 217.328(c)(2)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

By March 18, 2013, the Respondent installed an intruder-resistant fence at the Facility.

**Technical Requirements:**

The Order will require the Respondent to:

- a. Within 30 days, submit the summary submittal letter to the TCEQ Wastewater Permitting Section.
- b. Within 45 days, submit certification of compliance with Ordering Provision a.

**Executive Summary – Enforcement Matter – Case No. 44981**  
**Whitharral Water and Sewer Service Supply Corporation**  
**RN102329695**  
**Docket No. 2012-1869-MWD-E**

c. Within 60 days:

- i. Install equipment to determine the application rate of effluent applied to the land application area and install permanent transmission lines;
- ii. Establish and maintain an appropriate cover crop throughout the land application area; and
- iii. Begin maintaining accurate records of the volume of effluent applied to the land application area.

d. Within 75 days, submit certification of compliance with Ordering Provisions c.i through c.iii.

e. Within 90 days:

- i. Provide adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures;
- ii. Submit liner certifications from a Texas Licensed Professional Engineer for the two existing storage ponds and the facultative lagoon; or
- iii. If liner certifications from a Texas Licensed Professional Engineer cannot be provided, implement TCEQ Permit No. WQ0014942001, Special Provisions No. 19, Alternative I or Alternative II.

f. Within 105 days, submit certification of compliance with Ordering Provisions e.i. through e.iii.

***Litigation Information***

**Date Petition(s) Filed:** N/A

**Date Answer(s) Filed:** N/A

**SOAH Referral Date:** N/A

**Hearing Date(s):** N/A

**Settlement Date:** N/A

**Executive Summary – Enforcement Matter – Case No. 44981  
Whitharral Water and Sewer Service Supply Corporation  
RN102329695  
Docket No. 2012-1869-MWD-E**

***Contact Information***

**TCEQ Attorney:** N/A

**TCEQ Enforcement Coordinator:** Heather Brister, Enforcement Division,  
Enforcement Team 1, MC R-09, (254) 761-3034; Candy Garrett, Enforcement Division,  
MC 219, (512) 239-1456

**TCEQ SEP Coordinator:** N/A

**Respondent:** John Dukatnik, President, Whitharral Water and Sewer Service Supply  
Corporation, P.O. Box 85, Whitharral, Texas 79380

**Respondent's Attorney:** N/A



# Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	15-Aug-2012	<b>Screening</b>	24-Aug-2012	<b>EPA Due</b>	
	<b>PCW</b>	18-Mar-2013				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Whitharral Water and Sewer Service Supply Corporation		
<b>Reg. Ent. Ref. No.</b>	RN102329695		
<b>Facility/Site Region</b>	2-Lubbock	<b>Major/Minor Source</b>	Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	44981	<b>No. of Violations</b>	1
<b>Docket No.</b>	2012-1869-MWD-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Water Quality	<b>Government/Non-Profit</b>	Yes
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Heather Brister
		<b>EC's Team</b>	Enforcement Team 1
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$25,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$2,500
---	-------------------	---------

## ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

<b>Compliance History</b>	7.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$175
---------------------------	------------------	--------------------------------	-------

**Notes** Enhancement for one NOV with same/similar violations and one NOV for dissimilar violations.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
--------------------	----	------------------	-------------------	-----

**Notes** The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
--	-------------------	-----

<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
-------------------------	-------------------	-------------------	-----

Total EB Amounts \$73  
Approx. Cost of Compliance \$1,000  
\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$2,675
-----------------------------	-----------------------	---------

<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
---	------	-------------------	-----

Reduces or enhances the Final Subtotal by the indicated percentage.

**Notes**

<b>Final Penalty Amount</b>	\$2,675
-----------------------------	---------

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$2,675
-----------------------------------	-------------------------------	---------

<b>DEFERRAL</b>	20.0% Reduction	<b>Adjustment</b>	-\$535
-----------------	-----------------	-------------------	--------

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

**Notes**

Deferral offered for expedited settlement.

<b>PAYABLE PENALTY</b>	\$2,140
------------------------	---------

Screening Date 24-Aug-2012

Docket No. 2012-1869-MWD-E

PCW

Respondent Whitharral Water and Sewer Service Supply Corp

Policy Revision 3 (September 2011)

Case ID No. 44981

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102329695

Media [Statute] Water Quality

Enf. Coordinator Heather Brister

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	1	5%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 7%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

Enhancement for one NOV with same/similar violations and one NOV for dissimilar violations.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, &amp; 7) 7%

## &gt;&gt; Final Compliance History Adjustment

Final Adjustment Percentage \*capped at 100% 7%

Screening Date 24-Aug-2012

Docket No. 2012-1869-MWD-E

PCW

Respondent Whitharral Water and Sewer Service Supply Corporation

Policy Revision 3 (September 2011)

Case ID No. 44981

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102329695

Media [Statute] Water Quality

Enf. Coordinator Heather Brister

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 217.328(c)(2)

Violation Description

Failed to provide an intruder-resistant fence surrounding the wastewater treatment ponds, as documented during a record review conducted on May 9, 2012. Specifically, the chain-link fence is not topped with three strands of barbed-wire and does not meet the requirements of an intruder-resistant fence.

Base Penalty \$25,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		x	

Percent 5.0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

As a result of this violation, human health or the environment could be exposed to significant amounts of pollutants which would not exceed protective levels.

Adjustment \$23,750

\$1,250

## Violation Events

Number of Violation Events 2

107 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$2,500

Two quarterly events are recommended from the record review date (May 9, 2012) to the screening date (August 24, 2012).

## Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$2,500

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$73

Violation Final Penalty Total \$2,675

This violation Final Assessed Penalty (adjusted for limits) \$2,675

# Economic Benefit Worksheet

**Respondent** Witharral Water and Sewer Service Supply Corporation

**Case ID No.** 44981

**Reg. Ent. Reference No.** RN102329695

**Media** Water Quality

**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,000	4-Oct-2011	18-Mar-2013	1.45	\$73	n/a	\$73

**Notes for DELAYED costs**

Estimated cost to install an intruder resistant fence at the Facility. Date required is the date the violation was first documented. Final date is the date of compliance.

## Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

**Approx. Cost of Compliance**

\$1,000

**TOTAL**

\$73





# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

<b>DATES</b>	<b>Assigned</b>	15-Aug-2012	<b>Screening</b>	24-Aug-2012	<b>EPA Due</b>	
	<b>PCW</b>	14-Sep-2012				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Whitharral Water and Sewer Service Supply Corporation		
<b>Reg. Ent. Ref. No.</b>	RN102329695		
<b>Facility/Site Region</b>	2-Lubbock	<b>Major/Minor Source</b>	Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	44981	<b>No. of Violations</b>	4
<b>Docket No.</b>	2012-1869-MWD-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Water Quality	<b>Government/Non-Profit</b>	Yes
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Heather Brister
		<b>EC's Team</b>	Enforcement Team 1
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** \$16,000

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

**Compliance History** **7.0%** Enhancement **Subtotals 2, 3, & 7** \$1,120

Notes

Enhancement for one NOV with same/similar violations and one NOV for dissimilar violations.

**Culpability** **No** **0.0%** Enhancement **Subtotal 4** \$0

Notes

The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5** \$0

**Economic Benefit** **0.0%** Enhancement\* **Subtotal 6** \$0

Total EB Amounts \$6,520  
Approx. Cost of Compliance \$28,100

\*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal** \$17,120

**OTHER FACTORS AS JUSTICE MAY REQUIRE** **0.0%** **Adjustment** \$0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

**Final Penalty Amount** \$17,120

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** \$17,120

**DEFERRAL** **20.0%** Reduction **Adjustment** -\$3,424

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

**PAYABLE PENALTY** \$13,696

Screening Date 24-Aug-2012

Docket No. 2012-1869-MWD-E

PCW

Respondent Whitharral Water and Sewer Service Supply Corporation

Policy Revision 2 (September 2002)

Case ID No. 44981

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102329695

Media [Statute] Water Quality

Enf. Coordinator Heather Brister

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	1	5%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 7%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

Enhancement for one NOV with same/similar violations and one NOV for dissimilar violations.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 7%

Screening Date 24-Aug-2012

Docket No. 2012-1869-MWD-E

PCW

Respondent Whitharal Water and Sewer Service Supply Corporation

Policy Revision 2 (September 2002)

Case ID No. 44981

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102329695

Media [Statute] Water Quality

Enf. Coordinator Heather Brister

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 305.125(5) and Texas Commission on Environmental Quality ("TCEQ") Permit No. WQ0014942001, Operational Requirements No. 4

Violation Description Failed to maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures, as documented during a record review conducted on May 9, 2012.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				25%
Potential	x			

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health and environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

## Violation Events

Number of Violation Events 4 107 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$10,000

Four monthly events are recommended from the date of the record review (May 9, 2012) to the date of screening (August 24, 2012).

## Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$10,000

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$3,492

Violation Final Penalty Total \$10,700

This violation Final Assessed Penalty (adjusted for limits) \$10,700

# Economic Benefit Worksheet

**Respondent** Whitharral Water and Sewer Service Supply Corporation  
**Case ID No.** 44981  
**Reg. Ent. Reference No.** RN102329695  
**Media** Water Quality  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

## Delayed Costs

Equipment	\$15,000	2-Feb-2010	31-May-2013	3.33	\$166	\$3,326	\$3,492
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to maintain adequate safeguards at the Facility to prevent unauthorized discharges during electrical power failures. Date required is the date the permit was issued and final date is the expected date of compliance.

## Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$15,000

**TOTAL**

\$3,492

Screening Date 24-Aug-2012

Docket No. 2012-1869-MWD-E

PCW

Respondent Whitharral Water and Sewer Service Supply Corporation

Policy Revision 2 (September 2002)

Case ID No. 44981

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102329695

Media [Statute] Water Quality

Enf. Coordinator Heather Brister

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 305.125(1) and TCEQ Permit No. WQ0014942001, Special Provisions Nos. 6 and 7

## Violation Description

Failed to provide and maintain an adequate irrigation system which includes adequate equipment to determine the application rate and appropriate cover crops to prevent ponding of effluent or to prevent contamination of ground and surface waters, as documented during a record review conducted on May 9, 2012. Specifically, no irrigation system is in place for the Facility and a cover crop has not been planted and maintained.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Major	Harm Moderate	Minor
Actual			
Potential		x	

Percent 10%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix  
Notes

Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,000

\$1,000

## Violation Events

Number of Violation Events 2

107 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$2,000

Two quarterly events are recommended from the record review date (May 9, 2012) to the screening date (August 24, 2012).

## Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$2,000

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$2,564

Violation Final Penalty Total \$2,140

This violation Final Assessed Penalty (adjusted for limits) \$2,140

# Economic Benefit Worksheet

**Respondent** Witharral Water and Sewer Service Supply Corporation  
**Case ID No.** 44981  
**Reg. Ent. Reference No.** RN102329695  
**Media** Water Quality  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

## Delayed Costs

Equipment	\$11,000	2-Feb-2010	30-Apr-2013	3.33	\$122	\$2,442	\$2,564
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to install equipment to determine the application rate and maintain accurate records of the volume of effluent applied to the land application area, install permanent transmission lines, and to plant an appropriate cover crop. Date required is the date the permit was issued. Final date is the anticipated date of compliance.

## Avoided Costs

### ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$11,000

TOTAL

\$2,564

Screening Date 24-Aug-2012

Docket No. 2012-1869-MWD-E

PCW

Respondent Whitharal Water and Sewer Service Supply Corporation

Policy Revision 2 (September 2002)

Case ID No. 44981

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102329695

Media [Statute] Water Quality

Enf. Coordinator Heather Brister

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 305.125(1) and (5) and TCEQ Permit No. WQ0014942001, Special Provisions No. 18

Violation Description

Failed to provide certification by a Texas Licensed Professional Engineer that the pond liner meets the appropriate criteria within 45 days of permit issuance, as documented during a record review conducted on May 9, 2012. Specifically, the liner certifications for the two existing storage ponds and the facultative lagoon were not submitted to the TCEQ within 45 days of permit issuance.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

	Major	Moderate	Minor
Release Actual			
Potential			

Percent 0%

## &gt;&gt; Programmatic Matrix

	Major	Moderate	Minor
Falsification	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

## Violation Events

Number of Violation Events 3

107 Number of violation days

mark only one  
with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$3,000

Three single events are recommended, one for each pond and the facultative lagoon.

## Good Faith Efforts to Comply

0.0% Reduction

\$0

Extraordinary

Before NOV NOV to EDRP/Settlement Offer

Ordinary

N/A

x

(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$3,000

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$448

Violation Final Penalty Total \$3,210

This violation Final Assessed Penalty (adjusted for limits) \$3,210

# Economic Benefit Worksheet

**Respondent** Whitharal Water and Sewer Service Supply Corporation

**Case ID No.** 44981

**Reg. Ent. Reference No.** RN102329695

**Media** Water Quality

**Violation No.** 3

Percent Interest	Years of Depreciation
5.0	15

**Item Cost** **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**  
**Item Description** No commas or \$

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction	\$2,000	19-Mar-2010	31-May-2013	3.20	\$21	\$427	\$448
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

**Notes for DELAYED costs**

Estimated cost to have a Texas Licensed Professional Engineer certify that the pond lining meets the appropriate criteria. Date required is the date the pond liner certifications were due. Final date is the anticipated date of compliance.

## Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

**Approx. Cost of Compliance**

\$2,000

**TOTAL**

\$448



Screening Date 24-Aug-2012

Docket No. 2012-1869-MWD-E

PCW

Respondent Whitharal Water and Sewer Service Supply Corporation

Policy Revision 2 (September 2002)

Case ID No. 44981

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102329695

Media [Statute] Water Quality

Enf. Coordinator Heather Brister

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 305.125(1) and TCEQ Permit No. WQ0014942001, Special Provisions No. 4

## Violation Description

Failed to submit a summary submittal letter within 60 days of the permit issuance, as documented during an investigation conducted on October 4, 2011 and a record review conducted on May 9, 2012. Specifically, TCEQ Permit No. WQ0014942001 was issued on February 2, 2010, and the letter was due by April 3, 2010.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor
	X		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

## Violation Events

Number of Violation Events 1

874 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	X

Violation Base Penalty \$1,000

One single event is recommended.

## Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,000

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$15

Violation Final Penalty Total \$1,070

This violation Final Assessed Penalty (adjusted for limits) \$1,070

# Economic Benefit Worksheet

**Respondent** Whitharral Water and Sewer Service Supply Corporation

**Case ID No.** 44981

**Reg. Ent. Reference No.** RN102329695

**Media** Water Quality

**Violation No.** 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$100	3-Apr-2010	31-Mar-2013	2.99	\$15	n/a	\$15

**Notes for DELAYED costs**

Estimated cost to draft the summary submittal letter and submit it to the TCEQ Wastewater Permitting Section. Date required is the date the letter was due. Final date is the anticipated date of compliance.

## Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

**Approx. Cost of Compliance**

\$100

**TOTAL**

\$15

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



## TCEQ Compliance History Report

**PUBLISHED** Compliance History Report for CN601229743, RN102329695, Rating Year 2011 which includes Compliance History (CH) components from September 1, 2006, through August 31, 2011.

<b>Customer, Respondent, or Owner/Operator:</b>	CN601229743, Whitharral Water and Sewer Service Supply Corporation	<b>Classification:</b> AVERAGE	<b>Rating:</b> 3.00
<b>Regulated Entity:</b>	RN102329695, WHITHARRAL WATER SEWER SERVICE SUPPLY WWTP	<b>Classification:</b> AVERAGE	<b>Rating:</b> 3.00
<b>Complexity Points:</b>	0	<b>Repeat Violator:</b>	NO
<b>CH Group:</b>	08 - Sewage Treatment Facilities		
<b>Location:</b>	LOCATED APPROXIMATELY 2,400 FEET EAST OF UNITED STATES HIGHWAY 385 AND 2,400 FEET SOUTH OF FIRST STREET IN WHITHARRAL, HOCKLEY COUNTY, TEXAS		
<b>TCEQ Region:</b>	REGION 02 - LUBBOCK		
<b>ID Number(s):</b>	WASTEWATER PERMIT WQ0014942001		
<b>Compliance History Period:</b>	September 01, 2006 to August 31, 2011	<b>Rating Year:</b> 2011	<b>Rating Date:</b> 09/01/2011
<b>Date Compliance History Report Prepared:</b>	January 25, 2013		
<b>Agency Decision Requiring Compliance History:</b>	Enforcement		
<b>Component Period Selected:</b>	January 25, 2008 to January 25, 2013		

### **TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.**

**Name:** Heather Brister

**Phone:** (254) 761-3034

### **Site and Owner/Operator History:**

- |  |     |
|--|-----|
| 1) Has the site been in existence and/or operation for the full five year compliance period?       | YES |
| 2) Has there been a (known) change in ownership/operator of the site during the compliance period? | NO  |
| 3) If YES for #2, who is the current owner/operator?   | N/A |
| 4) If YES for #2, who was/were the prior owner(s)/operator(s)?                                     | N/A |
| 5) If YES, when did the change(s) in owner or operator occur?                                      | N/A |

### **Components (Multimedia) for the Site Are Listed in Sections A - J**

#### **A. Final Orders, court judgments, and consent decrees:**

N/A

#### **B. Criminal convictions:**

N/A

#### **C. Chronic excessive emissions events:**

N/A

#### **D. The approval dates of investigations (CCEDS Inv. Track. No.):**

Item 1	June 05, 2009	(748195)
Item 2	June 16, 2009	(749579)
Item 3	December 01, 2009	(783735)
Item 4	November 09, 2011	(962202)
Item 5	April 17, 2012	(997652)
Item 6	May 16, 2012	(1002276)

**E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):**

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

- 1      Date:      **06/09/2009** (748195)      CN601229743  
Self Report?   NO      Classification:      Major  
Citation:      Permit Condition 4. c. PERMIT  
                 TWC Chapter 26 26.121  
Description:      Failure to obtain required permit authorization as required.  
Self Report?   NO      Classification:      Moderate  
Citation:      30 TAC Chapter 305, SubChapter F 305.125(1)  
                 Effluent Limitations A. PERMIT  
Description:      Failure to meet effluent Biochemical Oxygen Demand and pH limitations as  
                 required by permit No. WQ0013818001.  
Self Report?   NO      Classification:      Minor  
Citation:      30 TAC Chapter 305, SubChapter F 305.125(1)  
                 Special Provision 3. PERMIT  
Description:      Failure to maintain treatment / storage ponds in regards to proper vegetation  
                 control of cattails and woody shrubs / trees.
- 2      Date:      **11/11/2011** (962202)      CN601229743  
Self Report?   NO      Classification:      Moderate  
Citation:      30 TAC Chapter 305, SubChapter F 305.125(1)  
                 30 TAC Chapter 305, SubChapter F 305.125(5)  
                 Operational Requirement 4. PERMIT  
Description:      Failure to provide adequate safeguards to prevent the discharge of untreated or  
                 inadequately treated wastes during electrical power failures as required by Permit  
                 No. WQ0014942001 Operational Requirement 4.  
Self Report?   NO      Classification:      Moderate  
Citation:      30 TAC Chapter 305, SubChapter F 305.125(1)  
                 Monitoring Requirement 5. PERMIT  
                 Operational Requirement 1. PERMIT  
Description:      Failure to provide a functional flow meter with annual calibration to measure  
                 influent flow from the main lift station, as required by Permit No.  
                 WQ0014942001.  
Self Report?   NO      Classification:      Moderate  
Citation:      30 TAC Chapter 305, SubChapter F 305.125(1)  
                 Conditions of the Permit. A. PERMIT  
Description:      Failure to meet effluent quality limitations regarding Biochemical Oxygen Demand  
                 (BOD) and pH, as specified by Permit No. WQ0014942001 Effluent Limitations.  
Self Report?   NO      Classification:      Moderate  
Citation:      30 TAC Chapter 305, SubChapter F 305.125(1)  
                 Monitoring Requirement 7(c). PERMIT  
Description:      Failure to report effluent violations which deviate from the permitted effluent  
                 limitation by more than 40%, as required by Permit No. WQ0014942001  
                 Monitoring Requirement 7(c).  
Self Report?   NO      Classification:      Moderate  
Citation:      30 TAC Chapter 305, SubChapter F 305.125(1)  
                 Special Provision 16 PERMIT  
Description:      Failure to provide and maintain an irrigation system, as required by Permit No.  
                 WQ0014942001.  
Self Report?   NO      Classification:      Moderate  
Citation:      30 TAC Chapter 305, SubChapter F 305.125(1)  
                 Operational Requirement 1. PERMIT  
Description:      Failure to maintain the facultative lagoon and storage ponds in regards to  
                 vegetation control, as required by Permit No. WQ0014942001 Operational  
                 Requirement 1.  
Self Report?   NO      Classification:      Moderate  
Citation:      30 TAC Chapter 305, SubChapter F 305.125(1)  
                 Special Provision 12. PERMIT  
Description:      Failure to maintain the land application area and provide cover crops for effluent  
                 and nutrient uptake as required by Permit No. WQ0014942001.  
Self Report?   NO      Classification:      Moderate  
Citation:      30 TAC Chapter 305, SubChapter F 305.125(1)  
                 Special Provision 18 PERMIT  
Description:      Failure to provide a liner certification document for the two existing storage ponds  
                 and facultative lagoon, as required by Permit No. WQ0014942001 Special  
                 Provision 18. No liner certification was available for review during the  
                 investigation.

Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) Special Provision 4 PERMIT		
Description:	Failure to submit a summary submittal letter to the TCEQ Wastewater Permitting Section of the Water Quality Division within 60 days of permit issuance, as required by Permit No. WQ0014942001. The facility was unable to locate any documentation of the required submittal letter for review during the investigation.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 217, SubChapter M 217.328(c)		
Description:	Failure to provide an intruder resistant fence surrounding the wastewater treatment ponds, as required by Chapter 217.328(c).		

**F. Environmental audits:**

N/A

**G. Type of environmental management systems (EMSs):**

N/A

**H. Voluntary on-site compliance assessment dates:**

N/A

**I. Participation in a voluntary pollution reduction program:**

N/A

**J. Early compliance:**

N/A

**Sites Outside of Texas:**

N/A



# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
WHITHARRAL WATER AND  
SEWER SERVICE SUPPLY  
CORPORATION  
RN102329695**

§  
§  
§  
§  
§  
§  
§

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2012-1869-MWD-E**

### **I. JURISDICTION AND STIPULATIONS**

On \_\_\_\_\_, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Whitharral Water and Sewer Service Supply Corporation ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates a wastewater treatment plant located approximately 2,400 feet east of United States Highway 385 and 2,400 feet south of First Street in Whitharral, Hockley County, Texas (the "Facility").
2. The Respondent has committed any other act or engaged in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any water in the state under TEX. WATER CODE ch. 26.
3. The Executive Director and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about May 21, 2012.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Nineteen Thousand Seven Hundred Ninety-Five Dollars (\$19,795) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Revenue Operations Section of the Commission's Financial Administration Division reviewed financial documentation submitted by the Respondent and determined that the Respondent is unable to pay part of the administrative penalty. Therefore, Sixteen Thousand One Hundred Ninety-Five Dollars (\$16,195) of the penalty is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The Respondent has paid One Hundred Dollars (\$100) of the undeferred administrative penalty. The remaining amount of Three Thousand Five Hundred Dollars (\$3,500) of the administrative penalty shall be payable in 35 monthly payments of One Hundred Dollars (\$100) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. The Executive Director Recognizes that by March 18, 2013, the Respondent installed an intruder-resistant fence at the Facility.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.



## **II. ALLEGATIONS**

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures, in violation of 30 TEX. ADMIN. CODE § 305.125(5) and TCEQ Permit No. WQ0014942001, Operational Requirements No. 4, as documented a record review conducted on May 9, 2012.
2. Failed to provide and maintain an adequate irrigation system which includes adequate equipment to determine the application rate and appropriate cover crops to prevent ponding of effluent or to prevent contamination of ground and surface waters, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and TCEQ Permit No. WQ0014942001, Special Provisions Nos. 6 and 7, as documented during a record review conducted on May 9, 2012. Specifically, no irrigation system is in place for the Facility and a cover crop has not been planted and maintained.
3. Failed to provide certification by a Texas Licensed Professional Engineer that the pond liner meets the appropriate criteria within 45 days of permit issuance, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and (5) and TCEQ Permit No. WQ0014942001, Special Provisions No. 18, as documented during a record review conducted on May 9, 2012. Specifically, the liner certifications for the two existing storage ponds and the facultative lagoon were not submitted to the TCEQ within 45 days of permit issuance.
4. Failed to submit a summary submittal letter within 60 days of the permit issuance, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and TCEQ Permit No. WQ0014942001, Special Provisions No. 4, as documented during a record review conducted on May 9, 2012. Specifically, TCEQ Permit No. WQ0014942001 was issued on February 2, 2010, and the letter was due by April 3, 2010.
5. Failed to provide an intruder-resistant fence surrounding the wastewater treatment ponds, in violation of 30 TEX. ADMIN. CODE § 217.328(c)(2), as documented during a record review conducted on May 9, 2012. Specifically, the chain-link fence is not topped with three strands of barbed-wire and does not meet the requirements of an intruder-resistant fence.

## **III. DENIALS**

The Respondent generally denies each allegation in Section II ("Allegations").

#### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Whitharral Water and Sewer Service Supply Corporation, Docket No. 2012-1869-MWD-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:

- a. Within 30 days after the effective date of this Agreed Order, submit the summary submittal letter to the TCEQ Wastewater Permitting Section to the following address:

Application Review and Processing Team  
Water Quality Division, MC 148  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

- b. Within 45 days after the effective date of this Agreed Order, submit certification of compliance with Ordering Provision No. 2.a, in accordance with Ordering Provision No. 2.g, below;
- c. Within 60 days after the effective date of this Agreed Order:
  - i. Install equipment to determine the application rate of effluent applied to the land application area and install permanent transmission lines;
  - ii. Establish and maintain an appropriate cover crop throughout the land application area, in accordance with TCEQ Permit No. WQ0014942001, Special Provisions No. 7; and
  - iii. Begin maintaining accurate records of the volume of effluent applied to the land application area.
- d. Within 75 days after the effective date of this Agreed Order, submit certification of compliance with Ordering Provisions Nos. 2.c.i through 2.c.iii, in accordance with Ordering Provision No. 2.g, below;

- e. Within 90 days after the effective date of this Agreed Order:
  - i. Provide adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures, in accordance with TCEQ Permit No. WQ0014942001, Operational Requirements No. 4;
  - ii. Submit liner certifications from a Texas Licensed Professional Engineer for the two existing storage ponds and the facultative lagoon, as specified in TCEQ Permit No. WQ0014942001, Special Provisions No. 18; or
  - iii. If liner certifications from a Texas Licensed Professional Engineer cannot be provided, implement TCEQ Permit No. WQ0014942001, Special Provisions No. 19, Alternative I or Alternative II.
- f. Within 105 days after the effective date of this Agreed Order, submit certification of compliance with Ordering Provisions Nos. 2.e.i through 2.e.iii, in accordance with Ordering Provision No. 2.g, below; and
- g. The certification of compliance required by Ordering Provisions Nos. 2.b, 2.d, and 2.f, shall be notarized by a State of Texas Notary Public and include the following certification language and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Water Section, Manager  
Lubbock Regional Office  
Texas Commission on Environmental Quality  
5012 50th Street, Suite 100  
Lubbock, Texas 79414-3421

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier.

## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

  
For the Executive Director

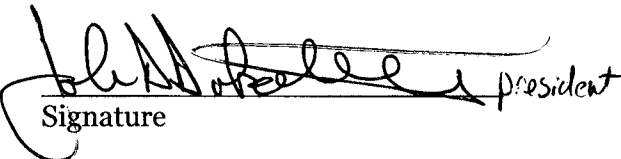
9/5/14  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

  
Signature

5-22-2014  
Date

John D. Dukatznik

Name (Printed or typed)

Authorized Representative of

Whitharral Water and Sewer Service Supply Corporation

President  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.